Nos. 20-542, 20-574

In the Supreme Court of the United States

REPUBLICAN PARTY OF PENNSYLVANIA,
Petitioner,

v.

KATHY BOOCKVAR, IN HER OFFICIAL CAPACITY AS PENNSYLVANIA SECRETARY OF STATE, ET AL.,
Respondents.

JOSEPH B. SCARNATI, III, ET AL.,
Petitioners,

v.

PENNSYLVANIA DEMOCRATIC PARTY, ET AL.,
Respondents.

On Petitions for Writs of Certiorari to the Pennsylvania Supreme Court

DONALD J. TRUMP FOR PRESIDENT, INC.'S REPLY IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE AS PETITIONER

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INTRODUCTION

If the presidential election hinges on the questions presented here, then the President's reelection campaign should be a party. That conclusion is simple. So simple that nearly all parties (including the Democratic plaintiffs who *filed* this case) have no objection to Movant's intervention. Pennsylvania's Secretary of State objects, but the Secretary's arguments are largely nonresponsive to the question of intervention. The Court should grant Movant's motion.

ARGUMENT

At the outset, this motion is not an appeal from the Pennsylvania Supreme Court's (unreasoned) denial of Movant's intervention. *Cf.* Sec'y Resp. 1-2. Movant is not asking this Court to let it intervene in the state-court proceedings, or to "review[]" the state court's application of Pennsylvania intervention law (something this Court has no jurisdiction to review anyway). Sec'y Resp. 1. Movant is asking *this* Court to let it intervene *here*. That question requires this Court to exercise its own discretion based on the intervention rules embodied in federal law. *See* Mot. 2.

As for those federal intervention rules, the Secretary contests only two requirements: timeliness and inadequacy. She claims that Movant waited too long to intervene in this Court and that the existing petitioners adequately represent Movant's interests. Sec'y Resp. 2-4. Neither argument works.

With respect to timeliness, Movant seeks to intervene as a petitioner, and the relevant certiorari petitions were filed less than two weeks ago. The Secretary does not explain how 14 days is a meaningful "delay." Sec'y Resp. 4. The added burden on the Secretary is zero: She has not yet filed her briefs in opposition, and she would have to file those briefs even without Movant's intervention. Even if she had filed them, the Secretary would suffer no prejudice because Movant simply adopts the existing petitions as its own. *Cf. N.B.D. v. Ky. Cabinet for Health & Family Servs.*, No. 19-638 (granting leave to intervene as a petitioner even though the motion was filed after the brief in opposition).

With respect to inadequate representation, the Secretary ignores the Court's holding that the required showing is "minimal." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972). Rule 24 calls for no more than "sufficient doubt" that representation "'may be' inadequate." *Id.* at 538 & n.10. That minimal doubt exists here. Movant is the real party in interest; it has the most direct and tangible stake in Pennsylvania's vote count. Movant should thus be permitted to control the representation of its interest, which it cannot do unless it's a party. *Cf. id.* at 539 (noting that intervenor should not be obliged to depend on an existing party's performance as "'his lawyer'"). Further, the party that the Secretary contends represents Movant's interest—the state Republican party—"agrees that the Motion should be granted." Party Resp. 1. When an existing party does not oppose intervention, courts consider this nonopposition telling evidence that the representation may be

inadequate. *E.g.*, *Utah Ass'n of Cntys. v. Clinton*, 255 F.3d 1246, 1256 (10th Cir. 2001); *Conservation Law Found. of New England v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992).

In any event, adequacy is not a reason to deny *permissive* intervention—an independent basis for intervention that the Secretary's response largely ignores. *E.g.*, *Planned Parenthood of Wis. v. Kaul*, 942 F.3d 793, 804 (7th Cir. 2019). So even if the Secretary were right about adequacy, the Court would still have sound practical reasons to allow intervention. Mot. at 7-10. The real party in interest should be allowed to participate in this case. And the interests of justice and judicial economy favor giving Movant a voice equal to the existing petitioners, especially given the vital public interest at stake.

Finally, the Secretary's continued insistence that the existing petitioners lack Article III standing, *see* Sec'y Resp. 4-5, is both irrelevant and incorrect. It's irrelevant because standing goes to the *substance* of whether to grant or deny the petitions, not intervention. *See Turn Key Gaming, Inc. v. Oglala Sioux Tribe*, 164 F.3d 1080, 1081 (8th Cir. 1999) ("intervention cannot be resolved by reference to the ultimate merits"). That the Secretary thinks this Court should deny certiorari because the petitioners lack standing is not relevant to whether Movant should be a party when the Court makes that decision. *Cf. N.B.D.*, No. 19-638 (granting intervention despite ultimately denying certiorari). The Secretary's standing arguments are incorrect anyway. The same arguments were raised in her opposition to the emergency stay applications. *See*

Sec'y Stay Opp. 11-14. Yet four Justices (the same number needed for certiorari) voted to grant those applications. *Scarnati v. Boockvar*, No. 20A53, 2020 WL 6128194 (U.S. Oct. 19, 2020).

But if this Court has doubts about petitioners' standing, those doubts would only be a reason to *grant* intervention. No one seriously questions Movant's standing, given its direct interest in the presidential election. In fact, now that Pennsylvania has entered the post-election, vote-counting phase, Movant is "the real party in interest." *Mullaney v. Anderson*, 342 U.S. 415, 416 (1952). This Court has added parties to resolve "standing" concerns in similar circumstances. *Id.* That course would be particularly appropriate here because, contrary to the Secretary's authorities, this case originated in *state* court and jurisdiction was undisputed. *Cf.* Sec'y Resp. 6-7. Article III did not apply until the case arrived here, and Movant is plainly injured by the state court's decision to allow illegal votes to be cast in Pennsylvania. "To dismiss the present petition[s] and require the new plaintiffs to start over" in state court, where the lower courts would be bound to follow the Pennsylvania Supreme Court's decision anyway, "would entail needless waste and runs counter to effective judicial administration." *Mullaney*, 342 U.S. at 416-17.

CONCLUSION

The Court should grant this motion and allow Movant to intervene as a petitioner.

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